

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1683 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

D.J. THAKUR

Versus

STATE OF GUJARAT

Appearance:

MR IS SUPEHIA for Petitioner

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/10/1999

ORAL JUDGEMENT

1. In this petition, the petitioner an Inspector of the Police Department of the Government of Gujarat is challenging the order of Director General and Inspector General Of Police, Gujarat State, Ahmedabad dated 2-8-1986 under which he was ordered to be prematurely retired from the services in the public interest.

2. This petition was admitted by this court on 26th

June, 1987 and more than 12 years have passed but nobody has cared from the side of the respondents to file reply to the special civil application. The averments made in the special civil application by the petitioner for want of contravention thereof by the respondents are to be taken as admitted.

3. Two A.G.Ps. are present in the Court, namely, Shri Mukesh A Patel and Shri S.K. Patel but both of them stated that they have not been instructed by the respondents to appear in this case nor the papers of this case have been sent to either of them. It is unfortunate that despite of setting handsome amount in the budget for defending the cases by the State Government which are filed in the courts against it, this is the total defence which has been put forth in the court by the State of Gujarat. If the matters are to be decided ex-parte I fail to see what for this heavy amount of public has to be wasted in keeping this institution, "Government Pleader's Office". This office has to be closed now and this amount has to be invested for some other welfare purpose for the citizens of the State. In almost all the cases either the reply is not there or if reply is there, the counsel is not instructed to appear in the matter. Be that as it may. It is a matter of concern of the State of Gujarat. Copy of this judgment be sent to the Chief Secretary of the State of Gujarat.

4. Rule 161 of the Bombay Civil Services Rules, 1959 empowers the authority if he is of the opinion that it is in the public interest to retire any Government servant prematurely by giving him a notice of not less than three months in writing or three months pay and allowances in lieu of such notice. The petitioner was ordered to be prematurely retired under the impugned order. The petitioner in para-8 of the special civil application has given out the details of his ten years service record wherefrom I find that there is no adversity in his service record for last ten years. It is true that for the period from 10th August, 1982 to 31st March, 1983 his work was reported to be average. Similarly, for the period from 1-4-1984 to 31-3-1985 again it was reported to be average but in none of the Annual Appraisal Performances Report his working was reported to be below average. The order passed by the appointing authority under Rule 161 of the Bombay Civil Services Rules, 1959 is subject to judicial scrutiny by this court and when it is challenged by this court by the employee or officer it is the duty of the respondents to satisfy that the powers under the said rule have been exercised reasonably and bonafide and on the material on the basis of which a man

of ordinary prudence could have formed the opinion that the officer has become a deadwood or his integrity is doubtful. Only in case where it is found on the basis of material available and after recording satisfaction by the authority this power could have been exercised. In this case from the side of the respondents, as stated earlier, nothing has been produced on the record and as such this is a case where it is difficult to accept that the power under 161 of B.C.S.R. 1959 has been exercised in the public interest. In the absence of the record of the reviewing authority produced before this court for perusal and the reply to the special civil application this order has to be termed as perverse and arbitrary order and it cannot be allowed to stand.

5. In the result, this special civil application succeeds and the same is allowed. The order dated 2-8-1986 of the Director General and Inspector General of Police, Gujarat State, Ahmedabad is quashed and set aside. The petitioner is entitled for all the consequential benefits which follows from the quashing and setting aside of this order. Rule is made absolute.

6. The petitioner has incurred heavy expenses for filing of this special civil application only because of this arbitrary order which has been passed by the respondents. I consider it to be a fit and appropriate case where the costs are to be awarded to him. The respondents are directed to pay Rs.2000/- as costs of this petition as what Shri Supehia stated that he charged this amount from the petitioner for rendering his professional services to him in this case.

zgs/-